No. 89-1939

In The

Supreme Court of the United States

October Term, 1990

TRI-STATE MOTOR TRANSIT COMPANY,

Petitioner,

vs.

LAURA ATKINSON, PATTY JONES, individually and as surviving spouse of WAYMAN JONES, deceased, and JANELL RENAE JONES,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER, BY REASON OF THE INTERSTATE COMMERCE ACT AND THE INTERSTATE COMMERCE COMMISSION REGULATIONS, AND AUTHORIZED INTERSTATE MOTOR CARRIER IS VICARIOUSLY LIABLE AS A MATTER OF LAW FOR NEGLIGENCE ARISING FROM THE OPERATION OF DEFECTIVE EQUIPMENT LEASED BY THE CARRIER, NOTWITHSTANDING THE USE BEING MADE OF THE EQUIPMENT AT THE TIME THE NEGLIGENT ACT OCCURS.

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STATEMENT OF THE CASE

Elvis D. Boren ("Boren") was the owner of a one-ton truck and trailer (known in the trade as a "hot-shot") which he had purchased in August, 1984, and leased to Tri-State in that same month. The lease was on a Tri-State form designated "Hot-Shot Contract" (Petition for Writ of Certiorari at 27a) and was in force continuously from August, 1984, until December 22, 1985, when it was cancelled. Under this Contract, Boren hauled loads for Tri-State in interstate commerce.

Boren was permitted by Tri-State to use his truck (of which he maintained physical possession) for personal

use when not hauling freight for Tri-State. However, the Contract stated that:

> "2. The equipment leased hereunder shall be under the exclusive use, possession and control of the Company [Tri-State] for the leased period, which shall assume responsibility therefor for the duration of this Contract."

This provision in the lease contract was required by Interstate Commerce Commission ("ICC") Regulations. (49 C.F.R. 1057.12(c)).

On November 29, 1985, while the Lease Contract was still in full force and effect, Boren drove his truck to the Burger Hut in Talala, Oklahoma, to get something to eat. The truck had "Tri-State Motor Transit Co., Joplin, Missouri" and Tri-State ICC Numbers on the cab door.

As Boren approached the Burger Hut, heading northbound on U.S. Highway 169, he observed Respondents' car coming from the north. It was dark that evening and the weather was "rainy and drizzly". Boren stopped for a few seconds, waiting for Appellees' southbound car to clear so he could turn left into the Burger Hut. Neither of his tail lights nor his left turn signal were functioning. (Transcript of Proceedings of June 25, 1987, pp. 377, 378) (Although Boren's last trip for Tri-State had been on October 18, 1985, Tri-State had not inspected the trailer since September 24, 1985). (Transcript of Proceedings of June 25, 1987 p. 466).

At that same moment, William Jack Marlin ("Marlin") was driving an automobile north on Highway 169. When he was 30 feet from the rear of Boren's truck he observed it. He swerved to avoid the truck, steering his car into the

southbound lane of traffic and into a collision with Respondents' automobile.

The collision caused the death of Wayman Jones and extensive personal injuries to the Respondents.

Respondents brought this action asserting that Boren and Tri-State were negligent in failing to maintain the lights on the truck and driving the truck in a defective condition. Respondents further asserted that Tri-State was vicariously liable for the negligence of Boren as a matter of law.

The case was submitted to the jury, which returned a verdict on June 26, 1987 for Respondent Patty Jones, individually and as surviving spouse of Wayman Jones, deceased, in the amount of $800,000.00; for Respondent Janell Renae Jones in the amount of $800,000.00; and for Respondent Laura Atkinson in the amount of $70,000.00. On October 6, 1987, the District Court of Rogers County entered its Order ruling that Tri-State was vicariously liable for the negligence of Boren. (Petition for Writ of Certiorari at 12a). On November 3, 1987, a Journal Entry of Judgment on Verdict was filed granting Judgment in favor of Patty Jones, individually and as surviving spouse of Wayman Jones. Judgment was also entered in favor of the other Respondents. (Petition for Certiorari at 6a).

On September 5, 1989, the Oklahoma Court of Appeals, Division No. 2, in an unpublished memorandum opinion affirmed the Judgments, and Petitioners' Petition for Rehearing was later denied on October 20, 1989. On March 12, 1990, the Oklahoma Supreme Court denied Petitioners' Petition for Certiorari.

REASONS WHY THE PETITION SHOULD BE DENIED

Congress and the Interstate Commerce Commission have established a regulatory scheme governing the lease of equipment by an ICC authorized carrier. It is the purpose of the regulatory scheme that the carrier-lessee be vicariously responsible to the public for the negligent operation of the leased vehicle without regard to whether, at the time in question, it was being used in the business of the lessee. *Schedler v. Rowley Interstate Transp. Co.*, 68 Ill.2d 7, 368 N.E.2d 1287, 1289 (Ill. 1977).

The trial and appellate courts of the State of Oklahoma correctly interpreted and applied the leased equipment regulations. In finding that Tri-State is vicariously liable for the death of Wayman Jones and the injuries to the Respondents, these courts properly followed the precedent and authority of the U.S. Tenth Circuit Court of Appeals. The result is in accord with every federal circuit court decision rendered since the 1978 amendment of the Interstate Commerce Act and the ICC regulations.

Petitioner seeks to avoid liability by resurrection of common law doctrines or creation of a new exception to the ICC regulations governing the lease of equipment. These regulations require an authorized carrier lessee to have exclusive possession, control and use of the equipment for the duration of the lease and to assume complete responsibility for the operation of the equipment for the duration of the lease.

The injuries to Respondents were caused by the operation of a truck in a defective condition while leased to Petitioner. The imposition of liability upon Petitioner in this instance is precisely what the ICC intended and

mandated by its regulations. Apparently the management of Petitioner had adopted policies and practices which were in direct conflict with the regulations.[1]

The facts of this case fail to establish a substantial federal question that should be decided by this court. Had Petitioner been the owner of the defective vehicle it would have been liable for Respondent's injuries under Oklahoma law as well as ICC safety regulations. Petitioner purchased liability insurance as a precaution against the very situation in which it now finds itself. Petitioner has only itself to blame for the gap in its coverage, for contracting with a financially inadequate lessor and for operation of a defective vehicle due to an indifferent and improper corporate policy with regard to the maintenance and control of leased equipment.

ARGUMENT

1. THE INTERSTATE COMMERCE COMMISSION REGULATIONS HAVE BEEN INTERPRETED IN ACCORDANCE WITH THEIR INTENDED PURPOSE.

Congress enacted the Interstate Commerce Act for the purpose of regulating trucking companies which wish to operate in interstate commerce. The act also governs

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[1] Petitioner's representative at trial testified that it was Petitioner's position that it had no control of a leased vehicle unless it was being used to haul cargo for Petitioner. (Transcript of Proceedings of June 25, 1987, p. 426). The same representative also testified that Petitioner would require repair of a leased vehicle which had inoperative taillights or turn signals only if the vehicle was under dispatch or carrying cargo. (Transcript of Proceedings of June 25, 1987, p. 432).

the use of non-owned equipment. Pursuant to this legislation, the Interstate Commerce Commission adopted numerous regulations including 49 C.F.R. § 1057. The Act and attendant regulations impose strict responsibility on ICC permitted and authorized carriers for the use of leased equipment in order to achieve three goals: (1) prevent ICC carriers from avoiding safety regulations and other restrictions imposed by the ICC upon their equipment and employees by the use of non-owned leased equipment and independent contractors, (2) promote highway safety by insuring that drivers or equipment furnished as part of a lease agreement do not violate safety regulations in their operations, and (3) provide members of the public and shippers with a financially responsible carrier in the event of an accident involving those leased vehicles. *E.g., Indiana Refrigerator Lines, Inc. v. Dalton*, 516 F.2d 795, 796 (6th Cir. 1975).

It is the declared purpose of the regulations to eliminate the problem of fixing responsibility for damages and injuries to members of the public. *Schedler v. Rowley Interstate Transp. Co.*, 68 Ill.2d 7, 368 N.E.2d 1287, 1289 (Ill.1977).

The stringent ICC regulations eliminate the difficulty faced by an injured Plaintiff in determining who controlled the vehicle, the purpose upon which the vehicle was embarked at the time of the accident, and the questions of agency, employee or independent contractor status, frolic and detour, and borrowed employee. *Schedler* at 1289.

There is now little doubt that the provisions of the Interstate Commerce Act and the regulations promulgated thereunder impose liability on the authorized

carrier for any accidents involving a vehicle under lease to it. *See* 49 U.S.C. § 10321(a) (1990), 10927(a) (1) (1990), 11107(a) (1990); and 49 C.F.R. §§ 1057.12(c), 1057.11(1); *E.g., Price v. Westmoreland,* 727 F.2d 494 (5th Cir.1984); *Rodriguez v. Ager,* 705 F.2d 1229 (10th Cir. 1983); *Carolina Casualty Ins. Co. of North America,* 595 F.2d 128 (3rd Cir. 1979); *Wellman v. Liberty Mutual Ins. Co.,* 496 F.2d 131 (8th Cir. 1974).

The Tenth Circuit Court of Appeals examined these regulations and policies and held that they impose vicarious liability for the negligent use and operation of a leased vehicle upon an authorized carrier lessee trucking company as a matter of law. *Rodriguez v. Ager,* 705 F.2d 1229 (10th Cir. 1983). In *Rodriguez,* Sammons Trucking Company, a motor carrier licensed by the ICC and subject to ICC regulations, leased a truck from David Ager. The lease allowed Ager to operate his truck in interstate commerce. At the time of the accident, the tractor being driven by Ager had Sammons' insignia on its door, including Sammons' decals and the identifying docket number assigned to Sammons by the ICC. The truck was not being driven on a mission for Sammons but was being driven by David Ager's brother, John, on a mission of his own.

The Tenth Circuit Court, in construing 49 C.F.R. § 1057, held that the liability of authorized carrier lessees was not formed by the traditional common law doctrine of master-servant relationships and respondeat superior. Rather, the Tenth Circuit found liability existing as a matter of law: "By virtue of a regulation of the ICC." *Rodriguez* at 1231. The *Rodriguez* court held that liability accrued to the carrier lessee by the mere fact that the

negligently operated vehicle was the object of a lease arrangement subject to ICC regulation.

The provisions of 49 C.F.R. § 1057.4(a) (4), in effect at the time of *Rodriguez* were as follows:

> Exclusive possession and responsibilities: Shall provide for the exclusive possession, control, and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of said contract, lease or other arrangement.

This regulation was later amended in 1978. The version of that regulation which was in force on November 29, 1985, was 49 C.F.R. § 1057.12(c) which states:

> *Exclusive possession and responsibilities* –
>
> (1) The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease.

By virtue of this provision, a carrier lessee assumes exclusive possession and complete responsibility to the public for the operation of a leased vehicle commencing with the effective date of the lease contract. The complete responsibility to the members of the public continues until the termination of the lease. As a result of this regulation, Tri-State became vicariously liable for damages to members of the public incurred by reason of the negligent acts of Boren and his operation of the leased vehicle while in a defective condition even though Boren was not on a mission for Tri-State, and even though Tri-State was not aware of the manner in which the truck was being used.

It is undisputed that at the time of the collision the truck, owned and driven by Boren, was under lease to Tri-State and had placed upon it Tri-State decals, ICC permits, and even Tri-State mud flaps. It is also undisputed that, at the time of the collision, the truck leased to Tri-State was being operated by Boren upon a public highway while in a defective condition (i.e. without tail lights or a left turn signal).

Boren, with Tri-State's full knowledge, had physical possession of the truck for his personal use when he was not hauling freight for Tri-State. Tri-State's representative went so far as to testify that "Tri-State Motor Transit only had control of the vehicle when it was actually using it in interstate commerce". (Transcript of Proceedings of June 25, 1987, p.426).

Under ICC regulations, Tri-State was in control of Boren's vehicle for the duration of the lease term. 49 C.F.R. §1057.12 (c). Such control is defined to include actual control, legal control and the power to exercise control. 49 U.S.C. §10102 (7). Thus, Tri-State was deemed to have been in actual and legal control of the truck at the time of the accident.

In reaching its conclusion, the *Rodriguez* court analyzed the legislative history and promulgation of 49 C.F.R. §1057 as well as the cases which have followed it. The Tenth Circuit held:

> The ICC regulation is applicable. The purpose is a praiseworthy one. It seeks to eliminate fly-by-night contracting by requiring the lessee of a vehicle who permits the equipment to be used on this basis to assure responsibility for the accidents of the driver of the vehicle which

> displays its insignia. To fail to uphold the ICC regulations would result in injustice. Trucking equipment such as that here present has a capability for bringing about terrible injuries and damages to life.

Rodriguez at 1236.

The rationale for the imposition of vicarious liability as a matter of law pursuant to ICC regulations was also discussed in *Rediehs Express, Inc., v. Maple,* 491 N.E.2d 1006, 1012 (Ind.Ct.App. 1986) wherein it is stated:

> In short, the policy enunciated in the ICC regulations in the cases make the carrier totally responsible to the injured Plaintiff as a matter of law for negligence of the lessor and its drivers of a leased vehicle. The carrier must, at his peril, exert care in his leasing arrangements and avoid leasing from "gypsies" or fly-by-night, irresponsible truckers. The regulations and cases make the carrier police its lessors as it is policed by the ICC.
>
> Argument is made that these cases create an unfair burden upon the carrier who is held responsible for the frolic and detour of its lessor. We disagree. . . . If the carrier has been derelict in employing an under-insured, financially irresponsible or incompetent lessor, it has only itself to blame.

Petitioner seeks to limit the scope of 49 C.F.R. §1057 (12) to situations in which the leased truck is being used to haul freight in interstate commerce. The statutory basis for this ICC regulation is 49 U.S.C. §11107, enacted in October, 1978. This statute repealed 49 U.S.C. §304. Section 304 (e) authorized the commission "to prescribe, with respect to the use by motor carriers (under leases, contracts or other arrangements) of motor vehicles not

owned by them, *in the furnishing of transportation of property* . . . . (2) such regulations as may be reasonable necessary in order to assure that *while motor vehicles are being so used* the motor carriers will have full direction and control of such vehicles and will be fully responsible for the operation thereof . . . ".

When §304 was repealed in 1978 and replaced with §11107, the Congress omitted the phrase "while motor vehicles are being so used" from the successor statute. By this omission, Congress clarified its intent as to the absolute liability of the carrier lessee. In making material changes in the language of a statute, Congress can neither be assumed to have regarded such changes as without significance, nor to have committed an oversight or to have acted inadvertently. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 106-107 (1941). The omission of the phrase in the recodified statute will be assumed to have been intentional. *See Pirie v. Chicago Title and Trust Co.*, 182 U.S. 438 (1901).

The Interstate Commerce Commission intended that an authorized carrier lessee be subject to vicarious liability to the public at all times during the term of its lease. The *only* exception to the exclusive possession and responsibility requirements of the lease regulation (49 C.F.R. §1057.12(c)) is contained in 49 C.F.R. §1057.12(c) (3) which provides when "an authorized carrier of household goods leases equipment *for the transportation of household goods*, as defined by the Commission, the parties may provide in the lease that the provisions required by Paragraph (c) (1) of this section apply *only during the time the equipment is operated by or for the authorized carrier lessee*". 49 C.F.R. §1057.12(c)(3). (Emphasis added). By

failing to list the exception urged by Petitioner it is clear that the Interstate Commerce Commission did not intend to dilute its regulations by the application of common law doctrines advocated by the Petitioner.

The imposition of vicarious liability in this case facilitates the intended purpose of the ICC regulations. The Interstate Commerce Act and the regulations promulgated thereunder have been interpreted and applied by the Oklahoma Courts in accordance with the intended purpose of the Act and in a manner consistent with the prior ruling of the Tenth Circuit United States Court of Appeals.

2. THE PETITION FOR CERTIORARI RAISES AN ISSUE NOT PRESENTED TO NOR CONSIDERED BY THE COURTS BELOW

Any assertion by Petitioner that the regulations are beyond the scope of authority granted by Congress would be meritless. *American Trucking Ass'ns v. United States*, 334 U.S. 298 (1953). Petitioner has never, at any prior stage of these proceedings, asserted that the Interstate Commerce Commission did not have the authority to adopt lease regulations which impose vicarious liability as a matter of law. Petitioner has thereby waived consideration of this issue. New questions may not, as a general rule, be raised for the first time on a petition for certiorari to this court. *Rogers v. Lodge*, 458 U.S. 613, 628 (1982).

3. SINCE THE RECODIFICATION OF THE INTERSTATE COMMERCE ACT AND THE REVISION OF REGULATIONS PROMULGATED THEREUNDER IN 1978, THE COURTS HAVE CONSISTENTLY IMPOSED ABSOLUTE LIABILITY ON LESSEE CARRIERS FOR THE NEGLIGENT USE OF LEASED EQUIPMENT DURING THE TERM OF THE LEASE.

Petitioner asserts that "the United States Courts of Appeals are rendering conflicting opinions as to the effect of 49 C.F.R. 1057". However, the cases cited by Petitioner, which conflict with *Rodriguez*, were decided prior to the recodification and amendment of the Interstate Commerce Act and the revision of the regulations in 1978. The case of *Leach v. Newport Yellow Cab, Inc.*, 628 F. Supp. 293 (S.D. Ohio 1985) cited by Petitioner, did not involve equipment leased to an interstate carrier or the interpretation of I.C.C. regulations.

Petitioner also asserts that United States Courts of Appeals are rendering opinions that conflict with opinions of state courts of last resort and that state courts are rendering conflicting opinions. Again, all but one of the cases cited by Petitioner were decided prior to 1978. The one exception is the case of *Hershberger v. Home Transport Co.*, 103 Ill.App.3d 348, 431 N.E.2d 72 (1982). Petitioner cites the *Hershberger* case as authority that the conduct of the driver giving rise to injury must have a nexus with interstate commerce. (Petition for Writ of Certiorari at p. 24). *Hershberger* involved an assault and battery totally unrelated to the operation of the leased equipment.[2]

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[2] The court, in dicta, suggested that a lessee carrier would be held liable under ICC regulations for a violation of safety

(Continued on following page)

On page 13 of its brief, Petitioner states that "no other court has interpreted the regulation [49 C.F.R. §1057 (12)] so broadly". Petitioner is not correct. State courts have consistently imposed vicarious liability on the lessee carrier, even though the leased truck was not being used to haul freight in interstate commerce. In *Empire Fire and Marine Insurance Company v. Truck Insurance Exchange*, 462 So.2d 76 (Fla.App. 1985) the Florida Court of Appeals held that a carrier lessee could be held liable for the negligence of the driver of a leased truck who was chauffeuring two women from a lounge to their motel room. Also see *Nationwide Mutual Insurance Company v. Holbrooks*, 371 S.E.2d 252 (Ga. 1988) in which liability was imposed even though the employee of the owner lessor was not driving the truck in interstate commerce at the time of the accident but to his home.

4. NO SUBSTANTIAL FEDERAL QUESTION EXISTS IN THIS CASE THAT SHOULD BE DECIDED BY THIS COURT.

Tri-State asserts that it would not have been liable under Oklahoma law if Boren had been operating a Tri-State *owned* defective vehicle at the time of the accident (Petition for Writ of Certiorari at p. 26). This assertion is without merit. Under Oklahoma law, an owner of a vehicle is liable for damages arising from a defective condition of his vehicle if the defect was readily discernible. *Murry v. Advanced Asphalt Co.*, 751 P.2d 209 (Okl. App.

(Continued from previous page)

standards and could even be liable for an intentional tort if the tort arose out of the operation of the motor vehicle.

1987), *Simmons Trucking Co., Inc. v. Briscoe*, 373 P.2d 49 (Okl. 1962). Similarly, the owner of a motor vehicle who permits another person, either gratuitously or for a consideration, to use the vehicle for the other's own purposes, may be held liable to a third person for personal injury or death or for damages caused by a defective condition of the vehicle of which the owner knew or should have known through the use of ordinary care. *Bush v. Middleton*, 340 P.2d 474 (Okl. 1959). It is undisputed that at the time of Respondents injuries, the vehicle leased to Tri-State was being operated upon the public highway while in a defective condition in violation of Title 47 Oklahoma Statutes §§12-201, 12-208, 12-209, 12-211, 12-219 and 13-101 (1981). In Oklahoma, the violation of a state law in the operation of a motor vehicle is negligence per se. *Garner v. Myers*, 318 P.2d 410 (Okl. 1957). Therefore, had Tri-State owned the defective vehicle driven by Boren in this case, liability would have been imposed upon Tri-State under Oklahoma law in addition to the ICC regulations.

Tri-State apparently appreciated the risk of liability to itself pursuant to ICC regulations even when the non-owned equipment is not engaged in the carrier's business. Tri-State acknowledged that "in addition to the general liability policy, *carriers generally purchase* 'bob-tail' insurance to cover the leased drivers and vehicles when they are not engaged in the carrier's business." (Petition for Writ of Certiorari at p. 27). Tri-State did in fact agree to purchase bobtail coverage for the subject truck in its contract with Boren.

Tri-State's remedy for losses caused by the negligence of its lessors is through indemnification agreements which place ultimate financial responsibility on the

negligent lessor.[3] *Transamerican Lines v. Brada Miller Fr. Sys.*, 423 U.S. 28 (1975).

This court further stated that

> "[i]t is apparent, therefore, that sound transportation services and the elimination of the problem of a transfer of operating authority, with its attendant difficulties of enforcing safety requirements and of fixing financial responsibility for damage and injuries to shippers and members of the public, were the significant aims and guideposts in the development of the comprehensive rules.
>
> It is likewise apparent that an important feature of the remedy the Commission devised to eliminate the undesirable practices was the rule that any lease in which the lessor furnished the driver was to be one for 30 days or more. See 49 C.F.R. §§1057.3(a) and 1057.4(a) (3). This served to eliminate the "hard core of the problem," that is, "the owner-operator trip lease and its attendant evils."

Brada Miller at 37.

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[3] In *Brada Miller* this court found that such agreements did not violate Interstate Commerce Commission safety regulations, because such provisions, which place ultimate financial responsibility on negligent lessor, tended to increase rather than diminish protection to the public. *Id.* at 41. This court also pointed out that "[i]t may also be said that the indemnification provision produces an additional source of funds for the one who is damaged or injured." *Id.* at 41. "Although one party [the authorized carrier] is required by law to have control and responsibility for conditions of the vehicle, and to bear the consequences of any negligence, the party responsible in law to the injured or damaged person may seek indemnity from the party responsible in fact." *Id.* at 40.

Accordingly a carrier must, at all times during the term of its lease, control the leased vehicles to whatever extent necessary to be responsible to the public. *See Brada Miller* at 39-40.

CONCLUSION

The Interstate Commerce Act and regulations promulgated thereunder impose liability on the authorized lessee carrier as a matter of law. By the act and regulations, Congress sought to protect the public by promoting highway safety and by requiring that a financially responsible carrier assume exclusive possession, control and use of the equipment and complete responsibility for its operation for the term of the lease. The regulations discourage carriers from leasing from irresponsible operators by imposing complete responsibility on the carrier.

By amending the ICC Act in 1978, Congress made it clear that carrier lessees would be responsible notwithstanding the use being made at the time the negligent act occurs, the only exception being the transportation of household goods. Tri-State seeks to destroy the effectiveness of the regulations by imposing exceptions which are neither found in the regulations nor intended by Congress. The effectiveness of the regulations would be greatly undermined and ICC authority to enforce its regulations would be crippled if interstate carriers were allowed to circumvent their responsibility to the public by the resurrection of the common law doctrines of master-servant and respondeat superior.

Tri-State was well aware of the ICC regulations when it entered its lease. It even purchased insurance providing coverage when the leased equipment was not engaged in its business. Tri-State's remedy is not with the courts but rather the use of indemnification agreements with its lessors and the purchase of additional coverage which protects the public from the operation of defective leased equipment upon the public highways.

Tri-State, and other carrier lessees, benefit from allowing lessor owners to maintain possession of their trucks in violation of ICC regulations. Therefore they should not complain when they are required to assume responsibility.

Pursuant to the foregoing argument and authorities, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX 1C

49 U.S.C. Sections

§ 10102. Definitions

In this subtitle–

(7) "control", when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means.

§ 10321. Powers

(a) The Interstate Commerce Commission shall carry out this subtitle. Enumeration of a power of the Commission in this subtitle does not exclude another power the Commission may have in carrying out this subtitle. The Commission may prescribe regulations in carrying out this subtitle.

§ 10927. Security of motor carriers, brokers, and freight forwarders

(a)(1) The Interstate Commerce Commission may issue a certificate or permit to a motor carrier under section 10922 or 10923 of this title [49 USCS § 10922 or 10923] and a certificate of registration to a motor carrier or motor private carrier under section 10530 or this title [49 USCS § 10530] only if the carrier files with the Commission a bond, insurance policy, or other type of security approved by the Commission, in an amount not less than such amount as the Secretary of Transportation prescribes pursuant to, or as is required by, the provisions of section

30 the Motor Carrier Act of 1980 [note to this section], in the case of a motor carrier of property, section 18 of the Bus Regulatory Reform Act of 1982, in the case of a motor carrier of passengers, or the laws of the State or States in which the carrier is operating, in the case of a motor private carrier. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the carrier for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance or use of motor vehicles under the certificate or permit, or for loss of damage to property (except property referred to in paragraph (3) of this subsection), or both. A certificate or permit remains in effect only as long as the carrier satisfies the requirements of this paragraph.

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§ 11107. Leased motor vehicles

(a) Except as provided in section 1101(c) of this title [49 USCS § 11101(c)], the Interstate Commerce Commission may require a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title [49 USCS §§ 10521 et seq.] that uses motor vehicles not owned by it to transport property under an arrangement with another party to–

> (1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;
>
> (2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect.

(3) inspect the motor vehicles and obtain liability and cargo insurance on them; and

(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary of Transportation on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

49 U.S.C. Section 304 (e)(2)
(repealed Oct. 1978)

§ 304. Powers and duties of Commission

(e) Regulations governing use of vehicles owned by others. Subject to the provisions of subsection (f) hereof, the Commission is authorized to prescribe, with respect to the use by motor carriers (under leases, contracts, or other arrangements) of motor vehicles not owned by them, in the furnishing of transportation of property–

(2) such other regulations as may be reasonably necessary in order to assure that while motor vehicles are being so used the motor carriers will have full direction and control of such vehicles and will be fully responsible for the operation thereof in accordance with applicable law and regulations, as if they were the owners of such vehicles, including the requirements prescribed by or under the provisions of this part with respect to safety of operation and equipment and inspection thereof, which requirements may include but shall not be limited to promulgation of regulations requiring liability and cargo insurance covering all such equipment.

§ 12-201. When lighted lamps are required

Every vehicle upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of five hundred (500) feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles. Laws 1961, p. 394, § 12-201.

§ 12-209. Color of clearance lamps – Slide marker lamps Back-up lamps and reflectors

Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate or the light emitted by a back-up lamp shall be white.

Laws 1961, p. 396, § 12-209.

§ 12-211. Visibility of reflectors – Clearance lamps and marker lamps

(a) Every reflector upon any vehicle referred to in Section 12-208 shall be of such size and characteristics and so

maintained as to be readily visible at nighttime from all distances within five hundred (500) feet to fifty (50) feet from the vehicle when directly in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(b) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the front and rear, respectively, of the vehicle.

(c) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the sides of the vehicles on which mounted.

Laws 1961, p. 396, § 12-211.

§ 12-219. Signal lamps and signal devices

(a) Any motor vehicle may be equipped and when required under this act shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one or more other rear lamps.

(b) Any motor vehicle may be equipped and when required under this act shall be equipped with lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or left. Such lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable and when in use shall display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than one hundred (100) feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable and when in use shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight. When actuated such lamps shall indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made.

(c) Any motor vehicle or combination of vehicles eighty (80) inches or more in overall width, and manufactured or assembled after the effective date of this Code, shall be equipped with lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or the left. Such lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable and when in use shall display a white or amber light, or any shade or color between white and amber, visible from a distance of not less than five hundred (500) feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable

and when in use shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than five hundred (500) feet to the rear in normal sunlight. When actuated such lamps shall indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made.

(d) No stop lamp or signal lamp shall project a glaring light. Laws 1961, p. 399, § 12-219.

§ 13-101. Vehicles without required equipment or in unsafe condition

No person shall drive or cause to be moved on any highway any motor vehicle, trailer, semitrailer or pole trailer, or any combination of vehicles, unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this act and said vehicle is in such safe mechanical condition as not to endanger the driver or occupant or any person upon the highway. Laws 1961, p. 412 § 13-101.

PART 1057–LEASE AND INTERCHANGE OF VEHICLES

AUTHORITY: 49 U.S.C. 304(e) and (f) and 5 U.S.C. 552, 553, and 559.

SOURCE: 44 FR 4681, Jan 23, 1979, unless otherwise noted.

§ 1057.1 Applicability.

The regulations in this part apply to the following actions by motor carriers holding permanent or temporary

operating authority from the Commission to transport property:

(a) The leasing of equipment with which to perform transportation regulated by the Commission.

(b) The leasing of equipment to motor private carrier or shippers.

(c) The interchange of equipment between motor common carriers in the performance of transportation regulated by the Commission.

§ 1057.11 General leasing requirements.

Other than through the interchange of equipment as set forth in § 1057.31, and under the exemptions set forth in Subpart C of these regulations, the authorized carrier may perform authorized transportation in equipment it does not own only under the following conditions:

(a) *Lease* – There shall be a written lease granting the use of the equipment and meeting the requirements contained in § 1057.12.

(b) *Receipts for equipment* – Receipts, specifically identifying the equipment to be leased and stating the date and time of day possession is transferred, shall be given as follows:

(1) When possession of the equipment is taken by the authorized carrier, it shall give the owner of the equipment a receipt. The receipt identified in this section may be transmitted by mail, telegraph, or other similar means of communication.

§ 1057.12 Written lease requirements.

Except as provided in the exemptions set forth in Subpart C of this part, the written lease required under § 1057.11(a) shall contain the following provisions. The required lease provisions shall be adhered to and performed by the authorized carrier.

(c) *Exclusive possession and responsibilities* – (1) The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease.

(2) Provision may be made in the lease for considering the authorized carrier lessee as the owner of the equipment for the purpose of subleasing it under these regulations to other authorized carriers during the lease.

(3) When an authorized carrier of household goods leases equipment for the transportation of household goods, as defined by the Commission, the parties may provide in the lease that the provisions required by paragraph (c)(1) of this section apply only during the time the equipment is operated by or for the authorized carrier lessee.